

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN RE: NOTICE OF PROPOSED RULEMAKING

RM 06-02

(LSA Document # 06-45)

**AUGUST 31, 2006 ADDITIONAL INITIAL COMMENTS OF THE
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

In this second round of comments on proposed changes to 170 IAC 7-6-1, *et seq.*, the Indiana Office of Utility Consumer Counselor (OUCC) submits the following additional initial comments regarding the Indiana Utility Regulatory Commission's (IURC) Proposed Rule RM 06-02 (LSA Document #06-45):

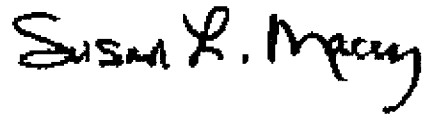
1. **Proposed Further Amendments to 170 IAC 7-6-2.** The OUCC recommends that the definition section in 170 IAC 7-6-2 be amended to remove reference to "alternative" or "incumbent" local exchange carriers (*i.e.*, ALECs or ILECs). Although interconnection requirements applicable to ALECs are less vigorous than those applied to ILECs, ALECs could still provide wholesale services or functionalities to other LECs. Wholesale disconnection notice requirements that ultimately protect Indiana

consumers should apply regardless of whether the disconnecting wholesale service provider or the LEC facing wholesale service disconnection is an ALEC or an ILEC. [See red-lined changes in the attached copy of RM 06-02 (LSA Document #06-45).]

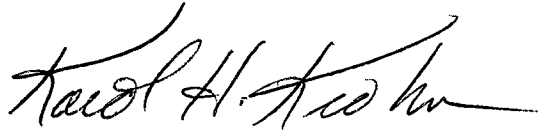
2. **Proposed Further Amendments to 170 IAC 7-6-3.** The OUCC recently learned of a situation where there was a delay in providing notice to the customers of a LEC facing wholesale service disconnection due to continuing settlement negotiations with the wholesale service provider after the disconnection notice was served. Although the OUCC encourages carriers to resolve billing and payment disputes voluntarily whenever possible, the negotiating LECs' attempts to settle their dispute should never shorten the lead time provided to customers of the LEC facing possible wholesale service disconnection. Therefore, the OUCC proposes that, if carriers pursue settlement negotiations after a disconnecting LEC has served notice of disconnection on a wholesale customer, the disconnecting LEC be required to provide new notice of a threatened wholesale service disconnection and required to wait another 30 days before disconnecting the wholesale customer. Re-starting the clock in that way will help ensure that all customers of the LEC subject to disconnection receive adequate advance notice of a pending service disconnection, providing end users sufficient time to research and select an alternate carrier without any interim danger of losing telecommunications service. [See the OUCC's proposed red-lined changes to 170 IAC 7-6-3 in the attached copy of RM 06-02 (LSA Document #06-45).]

The OUCC appreciates the opportunity to bring the above concerns to the Commission's attention and propose possible solutions on behalf of Indiana consumers.

Respectfully submitted,



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TITLE 170 INDIANA UTILITY REGULATORY
COMMISSION

Proposed Rule
LSA Document #06-45

DIGEST

Amends 170 IAC 7-6-1 through 170 IAC 7-6-3 and adds 170 IAC 7-6-4 through 170 IAC 7-6-6 regarding disconnection of a local exchange carrier by another local exchange carrier, notice of bankruptcy, relinquishment of service, and revocation of certificate of territorial authority. NOTE: LSA Document #06-45, printed at 29 IR 2599, was resubmitted for publication. Effective 30 days after filing with the Publisher.

170 IAC 7-6-1
170 IAC 7-6-2
170 IAC 7-6-3
170 IAC 7-6-4
170 IAC 7-6-5
170 IAC 7-6-6

SECTION 1. 170 IAC 7-6-1 IS AMENDED TO READ AS FOLLOWS:

Rule 6. Disconnection of a Local Exchange Carrier by Another Local Exchange Carrier; Notice of Bankruptcy; Relinquishment of Service; Revocation of Certificate of Territorial Authority

170 IAC 7-6-1 Policy and scope

Authority: IC 8-1-1-3; IC 8-1-2-5; IC 8-1-2-34.5; IC 8-1-2-88; IC 8-1-32.4; IC 8-1-32.5
Affected: IC 8-1

Sec. 1. (a) This rule is intended to establish a procedure for providing notice to customers when an alternative local exchange carrier: a LEC:

- (1) is disconnected from an incumbent local exchange carrier: another LEC;
- (2) files for bankruptcy; or
- (3) relinquishes all or part of its services or operating authority;

with special provisions for a LEC that is a provider of last resort.

(b) This rule supersedes any written contractual provisions that may exist pertaining to disconnection of service between local exchange carriers: LECs. (*Indiana Utility Regulatory Commission; 170 IAC 7-6-1; filed Nov 29, 1999, 1:57 p.m.: 23 IR 762; readopted filed Jun 29, 2005, 4:39 p.m.: 29 IR 144*)

SECTION 2. 170 IAC 7-6-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-6-2 Definitions

Authority: IC 8-1-1-3; IC 8-1-2-5; IC 8-1-2-34.5; IC 8-1-2-88; IC 8-1-32.4; IC 8-1-32.5
Affected: IC 8-1

Sec. 2. The following definitions apply throughout this rule:

(1) "Alternative local ~~Local exchange carrier~~" or "~~ALEC~~" "**LEC**" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange ~~that does not qualify as an incumbent local exchange carrier under subdivision (2).~~

(2) "~~Incumbent local exchange carrier~~" or "~~ILEC~~" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange and that:

(A) on February 8, 1996:

(i) provided telephone exchange service in such area; and

(ii) was deemed to be a member of the exchange carrier association under 47 CFR 69.601(b); or

(B) is a person or entity that on or after February 8, 1996, became a successor or assign of a member described in

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clause (A).

"Provider of last resort" means a provider that:

(A) holds a certificate of territorial authority issued by the commission; and

(B) is required to offer local exchange service throughout a defined geographic area.

(Indiana Utility Regulatory Commission; 170 IAC 7-6-2; filed Nov 29, 1999, 1:57 p.m.; 23 IR 762; readopted filed Jun 29, 2005, 4:39 p.m.; 29 IR 144)

Deleted: (3) "Local exchange carrier" or "LEC" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.¶
(4)

SECTION 3. 170 IAC 7-6-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-6-3 Notice to the commission; notice to customers

Authority: IC 8-1-1-3; IC 8-1-2-5; IC 8-1-2-34.5; IC 8-1-2-88; IC 8-1-32.4; IC 8-1-32.5

Affected: IC 8-1-2-58; IC 8-1-2-69

Sec. 3. (a) When an ~~ILEC~~ a LEC serves a notice of disconnection upon a ~~ALEC~~, another LEC, the ~~ILEC~~ shall serve simultaneous notice of the disconnection shall be served simultaneously upon the ~~commission~~. The ~~ILEC~~ shall serve notice of disconnection to the ~~ALEC~~ and following:

(1) The telecommunications division director of the commission via personal service or certified mail, return receipt requested.

(2) The LEC that is subject to disconnection via certified mail, return receipt requested.

(b) Five (5) business days after the notice from the ~~ILEC~~ disconnecting LEC is mailed, to the ~~ALEC~~, the ~~ALEC~~ LEC that is subject to disconnection must provide the telecommunications division director of the commission, in writing, with one (1) of the following:

(1) Proof of payment.

(2) The ~~ALEC's~~ LEC's customer list, including each customer's:

(A) name;

(B) address; and

(C) telephone number.

Absent a showing to the contrary, the ~~ALEC's~~ LEC's customer list shall be deemed confidential on a preliminary basis by the commission.

(3) Reasonable grounds for nonpayment to the ~~ILEC~~. Written confirmation from the disconnecting LEC that:

(A) the LEC subject to disconnection has provided the disconnecting LEC with grounds for nonpayment;

and

(B) the disconnecting LEC has rescinded the disconnection notice pending consideration of the LEC's grounds for nonpayment under subdivision (A).

(4) Copy of a complaint, regarding the subject of the disconnection notice, filed with the commission pursuant to rule 7 of this article.

(c) (1) If the ~~ALEC~~ LEC subject to disconnection fails to provide the commission with

(A) proof of payment under subsection (b)(1) or;

(B) confirmation from the disconnecting LEC to the ~~ILEC~~ under subsection (b)(3); or

(C) copy of a complaint under subsection (b)(4)

within ten (10) days after the disconnection notice is sent from the ~~ILEC~~, the ~~ALEC~~ LEC subject to disconnection must mail notice of disconnection to its customers within ten (10) calendar days after the disconnection notice is sent from the disconnecting LEC.

(2) The ~~ALEC~~ LEC subject to disconnection must provide proof of mailing the customer disconnection notice to the commission.

(3) The ~~ALEC's~~ LEC's notice of disconnection to its customers must include the following:

(A) ~~(4)~~ A statement that the customer must contact the telephone service provider of his or her choice for new service.

(B) ~~(2)~~ The last date of guaranteed service by the ~~ALEC~~ LEC.

(C) ~~(3)~~ The address and toll-free number of the:

(i) commission; and the

(ii) utility consumer counselor.

(D) ~~(4)~~ A statement notifying the customer that if the customer fails to choose a new local exchange carrier LEC on or before the date of disconnection from the ~~ALEC~~ LEC, the customer will be without telephone service.

(d) If the ~~ALEC~~ LEC subject to disconnection fails to notify its customers or show proof of mailing disconnection notices

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as required by subsection (c), the commission may do one (1) or more of the following:

(1) Initiate an investigation or other procedure in accordance with:

(A) IC 8-1-2-58;

(B) IC 8-1-2-69; or

(C) other related statutes.

(2) Request the disconnecting LEC to provide any customer identifying information it may have, which shall be treated as confidential on a preliminary basis by the commission.

(3) Initiate customer notification itself based on the information received in subsection (b)(2) and subdivision (2).

(e) An ILEC A LEC may not disconnect the ALEC another LEC until thirty (30) business calendar days after the ILEC sends the disconnection notice to the ALEC; is sent under subsection (a).

(f) If a disconnecting LEC rescinds its disconnection notice under subsection (b)(3), the original notice of disconnection under subsection (a) is rendered ineffective and the disconnecting LEC must restart the notice process under subsection (a) prior to any disconnection.

(g) This rule shall not prohibit an ALEC a LEC from rescinding its disconnection notice to customers after complying with subsection (c) if the ALEC LEC makes payment to the ILEC prior to disconnecting LEC before its disconnection. The LEC shall notify the commission immediately if it has rescinded its customer disconnection notice.

(h) This rule shall not apply where the disconnecting LEC is without notice of either of the following:

(1) The provider being disconnected is reselling the retail services of the disconnecting LEC to third parties.

(2) The provider being disconnected is using the retail facilities of the disconnecting LEC to serve customers.

(Indiana Utility Regulatory Commission; 170 IAC 7-6-3; filed Nov 29, 1999, 1:57 p.m.: 23 IR 762; readopted filed Jun 29, 2005, 4:39 p.m.: 29 IR 144)

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SECTION 4. 170 IAC 7-6-4 IS ADDED TO READ AS FOLLOWS:

170 IAC 7-6-4 Notice of bankruptcy

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-88; IC 8-1-32.4; IC 8-1-32.5

Affected: IC 8-1

Sec. 4. (a) If a LEC, the utility holding company of a LEC, or the corporate parent of a LEC is the subject of a bankruptcy proceeding, the LEC shall provide the commission with written notice and a complete copy of the bankruptcy petition within sixty (60) calendar days of the date the bankruptcy petition is filed.

(b) Notice to the commission shall include at least the following:

(1) The number of customers the utility has in Indiana, which shall be deemed confidential on a preliminary basis by the commission.

(2) The types of services provided.

(3) The name, mailing address, e-mail address, and telephone number of any of the following:

(A) A bankruptcy trustee.

(B) An attorney representing the utility in bankruptcy.

(C) A designated contact person at any company proposing to acquire the assets of the utility.

(c) If the LEC seeking bankruptcy protection is a provider of last resort, the LEC must provide the commission and each affected customer and wholesale provider written notice a minimum of sixty (60) calendar days before filing a bankruptcy petition with a court. The written notice to the commission must be provided on the form prescribed by the commission. (Indiana Utility Regulatory Commission; 170 IAC 7-6-4)

SECTION 5. 170 IAC 7-6-5 IS ADDED TO READ AS FOLLOWS:

170 IAC 7-6-5 Relinquishment of service by a LEC

Authority: IC 8-1-1-3; IC 8-1-2-5; IC 8-1-2-34.5; IC 8-1-2-88; IC 8-1-32.4; IC 8-1-32.5

Affected: IC 8-1

Sec. 5. A LEC that intends to cease providing services in all or part of its operating area or relinquish some or all of its Indiana certificate of territorial authority shall provide the following:

(1) Written notice to the commission, the utility consumer counselor, and any LEC from which it purchases services for resale, unbundled network elements, or with whose network the LEC that is ceasing operations or relinquishing authority is interconnected, sent at least sixty (60) calendar days before the date of cessation of operations or relinquishment. The notice to the commission shall include a customer list, which shall be deemed confidential on a

preliminary basis by the commission. If the LEC that is ceasing operations or relinquishing authority is a provider of last resort, the notice to the commission must be provided on the form prescribed by the commission.

(2) At least sixty (60) calendar days before the date of cessation of operations or relinquishment, a notice to affected customers, which must include the following:

(A) A statement that the customer must contact the telephone service provider of his or her choice for new service.

(B) The last date of guaranteed service by the LEC.

(C) The address and toll-free number of the:

(i) commission; and

(ii) utility consumer counselor.

(D) A statement notifying the customer that if the customer fails to choose a new LEC on or before the date of cessation of operations or relinquishment, the customer will be without telephone service.

(E) At least one (1) toll-free customer service telephone number maintained by the LEC that is ceasing operations or relinquishing authority to facilitate the:

(i) continuation of service; and

(ii) transition of customers to other providers;

if the LEC that is ceasing operations or relinquishing authority is a provider of last resort.

(Indiana Utility Regulatory Commission; 170 IAC 7-6-5)

SECTION 6. 170 IAC 7-6-6 IS ADDED TO READ AS FOLLOWS:

170 IAC 7-6-6 Revocation of certificate of territorial authority

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-32.4; IC 8-1-32.5

Affected: IC 8-1-2-88; IC 8-1-2-113; IC 8-1-6

Sec. 6. (a) A LEC has an affirmative duty to provide the following:

(1) The commission with current contact information.

(2) Notice as required under this rule.

(b) The commission may revoke the certificate of territorial authority of a LEC for the following:

(1) ~~Failure to follow regulatory requirements, including, but not limited to, the following:~~

(A) Provide notice as required under this rule.

(B) Pay the public utility fee assessed under IC 8-1-6.

(C) Respond to the following:

(i) A commission request for information, including surveys and data requests.

(ii) Inquiries by the commission regarding relinquishment of service, cessation of operation, or service disconnection.

(2) Administrative dissolution of the LEC's corporate authority by the Indiana secretary of state.

(3) Dissolution in bankruptcy.

(4) Cessation of operations or relinquishment of services in Indiana.

(c) Revocation of a LEC's certificate of territorial authority under this section may be initiated by any of the following:

(1) The commission on its own motion.

(2) Upon the request of either of the following:

(A) The office of the utility consumer counselor.

(B) Any other carrier providing services to the LEC.

(3) The voluntary application of the LEC.

(d) The revocation of the LEC's certificate of territorial authority, in whole or in part, shall be made by order of the commission notifying the LEC of the commission's intent to revoke the LEC's certificate of territorial authority within ten (10) calendar days. In the absence of a request for a hearing under IC 8-1-2-88(d) by the LEC or any other interested party, the revocation shall be effective after ten (10) calendar days. The LEC may cure any of the items listed in subsection (b), which, at the commission's discretion, may result in the termination of the revocation proceeding.

(e) In addition to revoking the LEC's certificate of territorial authority, the commission may issue any additional orders it deems necessary to protect the public interest under IC 8-1-2-113. (Indiana Utility Regulatory Commission; 170 IAC 7-6-6)

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